

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 6/3/2014	(3) CONTACT/PHONE Ryan Hostetter, Senior Planner\ (805) 788-2351	
(4) SUBJECT Hearing to consider an appeal by Kevin Elder on behalf of Ethel Pludow and Cynthia Sugimoto of the Planning Commission's approval of a Minor Use Permit/Coastal Development Permit to allow for the construction of a 2,374 square foot single family residence within the Residential Single Family land use category on the west side of Studio Drive in the community of Cayucos, District 2.			
(5) RECOMMENDED ACTION That the Board: 1. Hold the public hearing on the appeal of the approval by the Planning Commission as set forth in the attached Exhibits and staff report. 2. Adopt and instruct the chairman to sign the resolution affirming and modifying the decision of the Planning Commission, and certifying the Environmental Impact Report in accordance with the applicable provisions of CEQA, and approving Minor Use Permit/Coastal Development Permit DRC2005-00216, based on the revised findings in Exhibits A and C and the revised conditions in Exhibit B attached to the resolution.			
(6) FUNDING SOURCE(S) Department Budget	(7) CURRENT YEAR FINANCIAL IMPACT \$7,400	(8) ANNUAL FINANCIAL IMPACT \$7,400	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT { } Consent { } Presentation { X } Hearing (Time Est. 120 minutes) { } Board Business (Time Est. ____)			
(11) EXECUTED DOCUMENTS { X } Resolutions { } Contracts { } Ordinances { } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: { } 4/5 Vote Required { X } N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY { X } N/A Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW			
(18) SUPERVISOR DISTRICT(S) District 2			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Ryan Hostetter, Senior Planner

VIA: Ellen Carroll, Planning Manager / Environmental Coordinator

DATE: 6/3/2014

SUBJECT: Hearing to consider an appeal by Kevin Elder on behalf of Ethel Pludow and Cynthia Sugimoto of the Planning Commission's approval of a Minor Use Permit/Coastal Development Permit and Environmental Impact Report to allow for the construction of a 2,374 square foot single family residence within the Residential Single Family land use category on the west side of Studio Drive in the community of Cayucos, District 2.

RECOMMENDATION

That the Board:

3. Hold the public hearing on the appeal of the approval by the Planning Commission as set forth in the attached Exhibits and staff report.
4. Adopt and instruct the chairman to sign the resolution affirming and modifying the decision of the Planning Commission, and certifying the Environmental Impact Report in accordance with the applicable provisions of CEQA, and approving Minor Use Permit/Coastal Development Permit DRC2005-00216, based on the revised findings in Exhibits A and C and the revised conditions in Exhibit B.

DISCUSSION

Summary

This appeal addresses a Planning Commission action to approve a single family residence on a highly constrained parcel on a beach front lot in the community of Cayucos. The appeal issues focus primarily on some highly technical subjects including the definition of a "coastal bluff", the resulting appropriate setback from the "bluff" edge, coastal hazards including sea level rise, and visual impacts. These issues have been evaluated and discussed in an Environmental Impact Report (EIR) prepared for the project, at two Planning Commission hearings, and have involved experts in coastal erosion processes and hazards.

This proposed project is located on a unique property at the northern end of the developed Studio Drive neighborhood (on the West side). The parcel is a legal lot, a large portion of which consists of sandy beach, while the eastern portions of the lot contains fill deposited during the construction of Highway 1 and Studio Drive. The property is adjacent to the public State Beach area at Studio Drive/Old Creek. The parcel boundaries are such that they wrap around the adjacent developed property to the south which creates a situation where the viewshed of neighbor to the south is potentially affected by the proposed project. The appeal has been filed on behalf of the neighboring property owner to the south. Because of the unique characteristics of the project site including sandy beach characteristics and lot configuration in relation to the neighboring property owner, this project has undergone a very detailed review to ensure that all issues were adequately resolved.



Background

On January 23, 2014 and April 10, 2014, the Planning Commission heard a proposal by Mr. Jack Loperena for a Minor Use Permit (MUP)/Coastal Development Permit (CDP) for the construction of a single family residence in the Studio Drive neighborhood of Cayucos. The Planning Commission approved the project with modifications to the project design, findings, and conditions of approval. A timely appeal of the Planning Commission decision was filed by Kevin Elder with Sinsheimer, Juhnke, McIvor and Stroh LLP on behalf of Ethel M. Pludow and Cynthia R. Sugimoto on April 24, 2014. Staff recommends that your Board *affirm and modify* the decision of the Planning Commission because staff has recommended modifications to the Planning Commission approved findings (added findings I, J, & K) and conditions of approval (no's 33, 34, 35, 36 & 47) based on the issues raised in Mr. Elder's appeal. Copies of the findings and conditions showing the modifications in strikethrough and underline have been added as separate attachments for your review.

Project History and Timeline

The applicant, Mr. Jack Loperena, submitted an application for a MUP/CDP in May of 2006. During that time Planning reviewed and processed the application and completed a Mitigated Negative Declaration (MND) (August 9, 2007) for compliance with the California Environmental Quality Act (CEQA). Planning Department hearings were scheduled however staff received two request for reviews (appeals) of the CEQA document. Based on the comments included in the Request for Reviews, staff continued the item off calendar to address the issues raised in the requests for review. County staff consulted with County experts in geology, cultural resources, and emergency services during this time, however due to the controversy of the project the applicant and Planning staff elected to complete an Environmental Impact Report (EIR) for the project.

A Notice of Preparation for the EIR was distributed on August 7, 2009 before preparation of the draft EIR (DEIR) was undertaken. The DEIR was released on June 14, 2013 and the public as well as other agencies had until August 5, 2013 to comment on the DEIR. The County received many comments which are included in the Final EIR (FEIR) along with responses to these comments. The FEIR, was released in December 2013. The project was heard before the Planning Commission on January 23, 2014 and was continued with direction from the Commission to the applicant and staff to consider a revised, scaled back project. The project was revised, and considered by the Planning Commission on April

10, 2014 where a decision was made to approve a revised project. This decision was subsequently appealed and is the subject of today's hearing.

The proposed residence is visible from Highway 1 and Studio Drive, and especially from the public beach area to the north and west. The original design included a modern style with a large cantilevered portion that extended over the beach area of the applicant's property (also the project evaluated in the FEIR). During the Commission hearing on January 23, 2014 the Commission directed the applicant to revise the project and include a more neighborhood friendly design with a shorter cantilever and reduced scale. Additionally the Commission asked that staff evaluate the finished floor of the basement and the hazards relating to sea level rise and impacts that would occur as a result using the latest sea level rise data.

Following is a table outlining the original project characteristics and the Planning Commission Revised Design:

	Original Design Sq Ft	Revised Design Sq Ft
<u>Basement</u>	<u>1,040</u>	<u>814</u>
<u>Main level</u>	<u>1,097</u>	<u>841</u>
<u>Mezzanine</u>	<u>338</u>	<u>280</u>
<u>Garage</u>	<u>242</u>	<u>239</u>
<u>Car Port</u>	<u>200</u>	<u>200 (partially covered)</u>
<u>TOTAL</u>	<u>2,917</u>	<u>2,374</u>

This revised reduced project was discussed at the April 10, 2014 Planning Commission hearing and was approved by the Commission.

Appeal Issues

Many issues were outlined in the appeal letter by Mr. Elder dated April 24, 2014. The appeal letter discusses a "summary of proceedings" which accurately summarizes the process and history to date. Many of the appeal issues (begin on Page 3 of the letter) have been discussed in previous testimony before the Planning Commission and are published as comments in the Final EIR. Below is a summary of the issues outlined in the letter and a staff response to these issues:

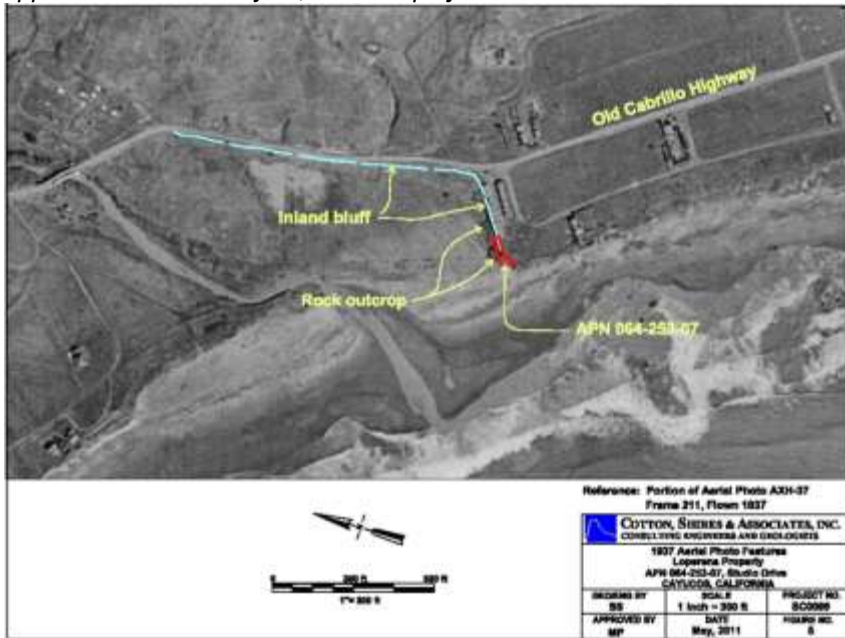
Issue 1 Coastal Bluff (Appeal Items 2.1, 3.1, 3.2, 3.3, 3.6, 3.7, and 8.1). The appellant states the project site is a coastal bluff because bluffs are "(1) those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion" (excerpted from California Code of Regulations Title 14). In addition, a letter by Haro Kasunich and Associates states that the site is on a coastal bluff.

Staff Response:

Cotton Shires and Associates's (CSA) 2011 report clearly acknowledges and represents that there is an active beach on the property, adjacent to a bedrock outcropping that faces partially southwest (oceanward). This outcropping is capped by fill soils placed circa 1960. The outcropping (identified as "Toe Of Bluff") is shown in the 1955 State of California Acquisition Map for Morro Strand State Beach produced by HKA (2013) and is very consistent with the location of outcropping mapped by Cleath (2006) and CSA (2011), the latter using the project survey and topography prepared by Volbrecht. The position of the top of the bedrock outcrop, mapped on a topographic survey map of the property, is consistent with the bluff edge line (blue line) presented on CSA Figure 6 (2011). Therefore, notwithstanding the scale used in the analysis, it is of sufficient accuracy to determine that the project site is located immediately north of the coastal bluff terminus.

The buried fluvial bluff underlying the Loperena property is clearly oriented perpendicular to the general trend of the coastal bluff along Studio Drive. A 300-foot general trend was used for the inland bluff component of the analysis. The logic for this approach was explained in detail (see CSA, 2011, Section 3.4, page 17). Beyond 300 feet, the inland bluff turns to a N15W trend on the east side of the Old Creek drainage, and any reasonable interpretation of a general trend for the inland bluff will result in a determination of the coastal bluff terminus being located southeast of the project site. If an additional 200 feet long segment of inland/fluvial bluff trending N15W is considered to establish the general trend of the inland bluff, the coastal bluff terminus would plot hundreds of feet south of the project site. In another example, if the analysis considers the oceanward 300-foot long segment of fluvial/inland bluff that is perpendicular to the coast, plus a 200 foot long segment of fluvial/inland bluff that trends N15W up Old Creek, the resultant vector between the endpoints of these segments trends approximately N30E, and the coastal bluff terminus still plots southeast of the project site. In summary, based on the evidence summarized above and provided in detail in the EIR, termini of bluff diagrams are

applicable to the analysis, and the project site is not located on a coastal bluff.



The coastal bluff interpretation is addressed in the Technical Report appended to the EIR (Cotton Shires and Associates, May 31, 2011), and is summarized in Section 4.3 Geology and Soils. A detailed analysis of the site terrain, development history, geologic setting, surface conditions, and interpretation of coastal bluff was provided in the Draft EIR and Appendices (see CSA, 2011, Section 2.1 Terrain, 2.2 Development History, 2.3 Geologic Setting, 3.1 Surface Conditions, and 3.4 Coastal Bluff Interpretation). The coastal bluff interpretation presented in CSA's 2011 report is based on strict application of the definition of bluff edges and coastal bluff termini contained in the California Code of Regulations, along with guidelines prepared by, and received from, California Coastal Commission geologist Mark Johnson in a personal communication from April, 2011. Those guidelines state the following important items:

- A bluff line or edge shall be defined as the upper termination of a bluff, cliff, or seacliff.
- A bluff edge line is the locus of points defining bluff edge in profile
- Fill adjacent to a bluff edge does not change a bluff edge
- Fill on a bluff face does not alter the position of the bluff edge
- Grading resulting in fill generally does not alter a bluff edge

Based on this, it appears inappropriate to consider that manmade features such as artificial fill prisms graded for roadway developments comprise "bluffs". An analysis to determine the terminus of a natural feature, such as a coastal bluff, should not be based upon manmade topographic features.

County staff's recommended bluff interpretation is supported by substantial evidence documented in the Final EIR, the Planning Commission Staff Report, the Planning Commission hearing presentation, and responses to questions and comments during the Planning Commission hearings. The project site's exposure to marine erosion is documented and disclosed in all documents, and it is County staff's recommendation that this fact by itself does not support a conclusion that the project would be located on a coastal bluff. County staff responded to the California Coastal Commission's comments and concerns in the Final EIR Response to Comments (refer to pages 9-14 through 9-16). The January 22, 2104 Coastal Commission letter did not identify any additional concerns not already included in their response to the Draft EIR. Staff has received and considered all correspondence from the Coastal Commission. While we recognize Coastal Commission staff's concerns, we have not received a formal response or indication of an in depth evaluation of all the geologic information from the Coastal Commission's geologist.

This site would be affected by coastal processes including potential wave run-up with extreme weather events potentially after year 2100. These events would include king tides in conjunction with severe storm surge, and sea level rise. The fact that this property is subject to coastal processes does not in itself determine that the bluff on the property is in fact a "coastal bluff" and the issue is in fact quite complicated.

Coastal Zone Land Use Ordinance regulations and Estero Area Plan, San Luis Obispo County Local Coastal Program, and Safety Element policies are addressed in Final EIR Table 3-1 Consistency with Plans and Policies and in the Planning Commission Staff Report. Staff finds the Planning Commission approved reduced project is consistent with these standards. Based on review of substantial evidence documented in the Final EIR and appendices (Cotton Shires and Associates 2011, 2012), it is County staff's recommendation that the site is not interpreted to be a coastal bluff, and the subsequent coastal bluff setbacks are not applicable.

Regarding comments about the fluvial bluff, the geologic description of the project site and surrounding area is described in the EIR and technical appendix (Cotton Shires and Associates 2011). As noted in these documents, the site is located on a bedrock remnant of a fluvial bluff that is now mostly buried under artificial fill material that was put in place during construction of Studio Drive and Highway 1. This portion of the bedrock outcrop was formed by fluvial erosion from the ancestral flow of Old Creek at a time when the creek was located south of its current location. The coastal bluff terminates southeast of the project site. The current alignment and floodplain of Old Creek (and associated Environmentally Sensitive Habitat Area [ESHA] designation) are located approximately 600 feet to the northeast, and features between the site and the creek include Studio Drive (and associated fill prism) and a parking area. The project site is located well outside of the buffer zone and noted 50-foot setback for the creek, and would not have an adverse effect on sensitive habitat, surface waters, or vegetation present within Old Creek.

Issue 2 Local Coastal Program Compliance (Appeal Item 2.1 and 3.9). The appellant states that the project triggers the "Estero Area Plan and the San Luis Obispo County Local Coastal Program (LCP) coastal bluff policies including: Areawide Standard 1-4, Hazards Policy 1 and 6, Coastal Zone Land Use Ordinance (CZLUO) Section 23.04.118, and Safety Elements of the General Plan Sections S-23 and S-63." The appellant states that the revised Planning Commission approved project is inconsistent with all of these standards and policies.

Staff response: The project complies with all of the standards and policies as outlined in the Planning Commission Staff Report. Following is a summary response to the items specifically noted in the appeal letter:

Areawide Standard 1-4:

Estero Area Plan areawide standard I(4) relates to coastal bluff setback requirements. The requirement states, "The bluff setback is to be determined by the engineering geology analysis required in I.1.a. [above] adequate to withstand bluff erosion and wave action for a period of 100 years. In no case shall bluff setbacks be less than 24 feet...." This project has undergone the required geologic analysis to determine the bluff erosion rate and is included with the project's Environmental Impact Report. In summary, this site is situated behind a rock outcrop that has existed unchanged based on review of photographic evidence over the course of 70 years (analysis includes photograph dated 1937 which is published in the FEIR). The lot includes fill from when Highway 1 was improved and this fill is placed landward of the rock outcrop which remains in place today. The rock outcrop has partially protected the fill on the lot from coastal processes (outcrop listed as edge of rocks on site plan). Additionally, the County geologists have determined that the site is located off of the coastal bluff, and that a portion of the lot includes an old fluvial bluff (which is perpendicular to the sea) from when Old Creek existed in this area prior to Whale Rock dam being constructed. Because the County has determined that this is outside the coastal bluff, the coastal bluff setback did not apply in this unique case. The geologic analysis however does include the required coastal erosion analysis and has determined that the proposed development is located within a stable area which will not be impacted by erosion over a 100 year period (mostly due to the stability of the existing rock outcrop).

Coastal Hazards Policies 1 & 6:

Coastal Hazards Policies 1 and 6 discuss new development requirements along the coast and bluff setbacks. Specifically Policy 1 requires that new development include designs which minimize risks to life and property, and that shoreline protective devices shall not be required for the life of the structure. Additionally, permanent structures are not allowed on the beach. The proposed project does not include any shoreline protective devices. The house foundation is not considered a shoreline protective device because it is constructed of concrete and is intended to withstand any future extreme coastal hazard. The foundation is intended to withstand extreme events to eliminate potential hazards when reviewing extreme high tide scenarios with sea level rise after the year 2100. The natural rock outcrop on the site acts as a natural barrier for the proposed residence as it is shown as being very erosion resistant. The lower level of the proposed residence on the southern side is approximately 26 feet from the edge of the rocks and approximately 12 feet from the edge on the northern side (due to the angle of the edge of rocks relative to the property lines).

Policy 6 requires that development include a geologic evaluation showing an appropriate bluff setback to withstand 100 years of wave erosion. Similarly to Policy 1 the project shall be able to withstand 100 years of wave action without any

shoreline protective devices. This project complies with this requirement as outlined in the geologic evaluation conducted for the project (also included in the FEIR).

CZLUO Section 23.04.118 (Blufftop Setbacks):

This section of the Coastal Zone Land Use Ordinance is intended to implement Coastal Hazards Policies 1 and 6 above. The project is required to include a geologic evaluation and a bluff setback shall be implemented based on the evaluation which would essentially allow for 75 years or 100 years (based on Estero Area Plan) of wave action. This 100 year erosion rate will establish an appropriate buffer or setback between the proposed development and the edge of the bluff. This project complies with these requirements and is sited to withstand at least 100 years of coastal processes.

Safety Element Sections 23 and 63:

Safety Element Policy S-23 Coastal Bluffs states "Development shall not be permitted near the top of eroding coastal bluffs." This proposed project is located on a site which is not subject to bluff erosion, and geologic evaluation have been conducted which show that the site is able to withstand 100 years of coastal processes.

Safety Element Section 63 states, "Require coastal bluff erosion studies to determine the rate of erosion and the resulting safe distance from the top of the bluff for development, in accordance with the LCP." Similar to S-23 above, this project complies with this requirement.

Issue 3 Bluff Setback Requirements, Creek Setbacks, and Shoreline Protective Devices (Appeal Item 2.6, 3.6, 3.7).

The appellant states that the project is not in compliance with bluff setback and creek setback requirements and that the project includes shoreline protective devices which are not allowed.

Staff Response:

The Planning Commission reduced project does not include a seawall or shoreline protection device. . The structure itself would be designed consistent with geotechnical recommendations, which would "minimize risks to human life and property", and "ensure structural stability while not creating or contributing to erosion or geologic instability" (Coastal Hazards Policies 1 and 2). Aerial photos show that the bedrock outcrop west of the structure would withstand direct wave action and exposure, and would not require protection over the next 100 years. Beach scour would occur naturally at the toe of the bedrock, and would not adversely affect the structure. While the residence and associated components (i.e., foundation, structure walls, and retaining walls perpendicular to the beach) would be constructed to maintain integrity in a coastal environment, these features are not considered shoreline protection because no features would extend beyond the structure and driveway in order to prevent erosion of land and any other hazard typically addressed by sea walls (e.g., bluff instability resulting in the residence falling into the beach area).

With regards to bluff setbacks, refer to Local Coastal Program Compliance, Estero Area Plan Areawide Standard I-4 (discussed in Appeal Issue 2 above). The creek setback requirements have been evaluated and it was determined that they are not applicable in this case. While the site contains a bluff that was historically formed by fluvial forces from Old Creek , the site conditions have been irrevocably altered by the construction of Highway 1 and Studio Drive, and most importantly, by the installation of Whale Rock Dam. Old Creek transitions from a creek with defined riparian corridor to a lagoon with associated wetlands and no defined bank. During sufficiently high flows, the lagoon will breach the beach sand barrier and exit to the ocean. Based on aerial photographs, the Old Creek lagoon is located approximately 500 feet from the Old Creel lagoon, over 600 feet from the wetland areas associated with the creek mouth, and 500 - 700 feet from the closest riparian vegetation. Studio Drive and the Studio Drive parking area are located between the subject property and Old Creek. The creek or riparian setbacks identified in the Estero Area Plan, and the Coastal Zone Land Use Ordinance are not applicable in this case.

Issue 4 Visual Resources (Appeal Item 2.2 and 4). The appellant states that the revised project approved by the Planning Commission still poses a significant impact to the visual resources of the area. A 33 foot high structure with a 21 foot cantilever (11 feet over the sand) is inconsistent with the LCP Visual and Scenic Resources Policies 1, 2, 5, 6, and 11.

Staff Response: The project complies with all of the design requirements of the Estero Area plan for both bluff top and non bluff top standards due to its size (i.e. gross structural area), setbacks and the height. These standards which are outlined in the Estero Area Plan for the Cayucos Small Scale Neighborhood are intended to implement the LCP Visual and Scenic Resources policies listed above. The height requirement for this area of Cayucos is a maximum of 15 feet from the centerline elevation of Studio Drive (which is at an elevation of 31 feet). The maximum elevation of the roofline is

proposed to be at 46 feet which complies with this requirement. The project is conditioned to include survey height checks while under construction to ensure that the house complies with this requirement during construction.

The project site is located within a very visible area from the public beach, Studio Drive and portions of Highway 1. The Final EIR outlined specifically how this project will impact the aesthetics of the area, however the conclusions were that basically the construction of this single family residence within this small lot in a developed neighborhood was not going to introduce a significant visual impact, and will essentially extend an existing neighborhood. For specific information please refer to the Final EIR section 4.1 on aesthetic resources. Additionally, the Planning Commission approved reduced project will include less of a visual impact due to the fact that the project is much smaller in size (cantilever is 16 feet shorter), and the architectural style has been revised to include a more traditional design which will blend into the surrounding neighborhood.

Issue 5 Coastal Hazards (Appeal Items 2.3, 3.4, 3.6, 3.7, and 5). The appellant states that the coastal hazards are underestimated in the Final EIR, and that the appellant's geologist, Haro, Kasunich and Associates Inc. identified inconsistencies in the EIR conclusions.

Staff Response

The Final EIR, the technical reports in the public record (GeoSoils, Inc. 2013, 2014), and the Planning Commission Staff Report address and assess exposure to coastal hazards, and support staff's recommendation that the noted exposure (including future hazards over the next 100 years) would not have a significant adverse effect on structural integrity. Based on the low height and velocity of extreme wave runup water reaching the basement wall (refer to GeoSoils, Inc. 2014), wave runup deflection would not adversely affect neighboring properties.

Based on the presence of erosion-resistant bedrock, and compliance with mitigation measure GS/mm-4, which requires the use of deepened pier foundations identified in the Engineering Evaluation (Shoreline Engineering 2012) and Updated Geotechnical Investigation (GSI Soils, Inc. 2011), the project would maintain stability and structural integrity, and would withstand erosion and wave action. There is no evidence that shoreline protection structures would be required for the structure, provided it is constructed pursuant to mitigation identified in the Final EIR and following the recommendations identified in referenced geotechnical reports. The evidence presented in the Final EIR and associated and subsequent technical reports support the conclusion that that exposure to rising sea level over the life of the structure and associated coastal hazards would not result in substantial adverse effects to the structure, including compromised structural integrity.

Noted concerns regarding Sea Level Rise and Coastal Hazard Discussion, are addressed in Response to Haro, Kasunich, and Associates, Inc.(HKA), Comments on GeoSoils Inc. March 12, 2014 Report dated 31 March 2014 (GeoSoils, Inc., April 4, 2014). The profile chosen for the analysis uses the cross-section most vulnerable to wave run-up attack. The northern property line is at an angle (not parallel) to incoming waves, and therefore would not be subject to worst-case wave run-up conditions. In addition, mitigation (GS/mm-4) would require deepened pier foundations consistent with the geotechnical report (GSI Soils, Inc. 2011) and subsequent peer review (Cotton Shires and Associates 2011) prepared for the project. This measure is applicable to both the previously proposed project and the applicant's redesigned project approved by the Planning Commission, and remains necessary to avoid significant erosion hazards over the next 100 years.

The bluff edge delineation is presented in the EIR Appendix (refer to Cotton Shires and Associates 2011, Figure 6). The Final EIR figures and revised figures for the Planning Commission approved reduced project submitted by the applicant show site topography. The project plans do not show the coastal bluff setbacks because, based on the recommended interpretation and site-specific conditions, bluff setbacks would not apply in this case.

Issue 6 Sea Level Rise (Appeal Items 2.4, 6, 6.1, 6.3, and 6.4). The appellant states that the Final EIR is inconsistent with the General Plan in its assumptions of the sea level rise and its resulting effect on the project.

Staff Response:

The issue of climate change and possible sea level rise is a quickly evolving subject with a number of different science based estimates for projected sea level rise. The predicted estimate for sea level rise is based on best available recent information provided in California Coastal Commission (CCC) Draft Guideline document (which only identifies sea level rise up to the year 2100) and the County's most recent Local Hazard Mitigation Plan (draft December 2013 to County Board of Supervisors). The appellants concerns regarding sea level rise and potential effects at the project site have been addressed on several occasions including in the FEIR and in supplemental memos and staff reports prepared for the

Planning Commission. These concerns are discussed in the most recent sea level rise memo presented to the Planning Commission (GeoSoils, Inc., March 12, 2014) as well as comments provided in the GeoSoils Inc. March 12, 2014 Report dated 31 March 2014 (GeoSoils, Inc., April 4, 2014). It has been determined that, the project would be engineered to withstand coastal processes and maintain structural integrity.

The EnergyWise Plan which is the County's Climate Action Plan (November 2011) provides information, including an estimate for sea level rise in the Adaptation Chapter. The Plan does not include a policy or standard requiring use of a specific sea level rise estimate. The Plan states an estimated sea level rise from 3.3 to 4.6 feet by 2100, which is not as conservative as the most recent CCC Draft Guidelines used in the project analysis (5.5 feet). The EIR is an informational document, and presents the analysis, impact assessment methodology, and cited references and evidence used to support the analysis and resulting conclusions. The EIR itself is not to be evaluated for consistency with the General Plan. Supplemental documentation provided after completion of the Final EIR is included in the Administrative Record, which will be considered by your Board to make findings regarding the project's consistency with the County General Plan and related policies.

County staff has prepared revised CEQA Findings for the Board's consideration to incorporate the information in this supplemental documentation.

Issue 7 Lateral Access (Appeal Item 2.5, 7, 7.1 and 7.2). The appellant states that the project does not comply with the lateral access requirements of the Local Coastal Plan, the Estero Area Plan and the Coastal Zone Land Use Ordinance. The appellant states that the lateral access should extend from the mean high tide to the toe of the bluff, no cantilevered structures allowed over the access area, and that the access must be dedicated prior to any permits being issued.

Staff Response: Staff agrees with the appellants on this issue and, for that reason, recommends that your Board partially uphold the appeal. The Estero Area Plan requires dedication of lateral access from the toe of the bluff to either the mean high tide or to the inland boundary of the public beach. Because this site is unique, staff has submitted a revised condition of approval which requires an offer to dedicate lateral access extending from the seaward property line to the toe of the rock outcrop. The seaward property line represents that inland boundary of the public beach, and the toe of the rock outcropping is equivalent to the toe of the bluff. This revised condition of approval requires recordation of the lateral access prior to issuance of any construction permits. Additionally there are no structures allowed within this lateral access easement.

Issue 8 Coastal Plan Policies for Visual and Scenic Resources Policy 3 Stringline Method (Appeal Item 2.7 and 9). The appellant states that the project is inconsistent with the Coastal Plan Policy 3 stringline method for siting new development because this development extends beyond the adjacent residence.

Staff Response: Coastal Plan Policy 3 for Visual and Scenic resources describes a stringline method for siting new development along the coast. The policy states that "no part of a proposed new structure, including decks, shall be built farther into a beachfront than a line drawn between the most seaward portions of the adjoining structures; except where the shoreline has substantial variations in landform between adjacent lots in which case the average setback of the adjoining lots shall be used." Generally on other projects the County relies on the setback requirements outlined in the geologic evaluation which in most cases determines the limits of development. The property with this proposed project is not located in line with the adjacent bluff top neighborhood to the south, does not include adjacent development to the north, and can't be compared to the adjacent property for setback requirements. The parcel boundary wraps entirely around the adjoining property to the south along the beach which creates a unique situation where the adjacent property does not contain a property line along the beach. This project site is essentially in front of, and wraps almost entirely around the parcel adjacent. Using the stringline method along the bluff to include the residences to the south, this proposed project would not extend further toward the beach than the neighborhood to the south.

Issue 9 Estero Area Plan – Cayucos Small Scale Neighborhood Standards (Appeal Item 2.8 and 10). The appellant states that the project does not comply with the Small Scale Neighborhood Standards and is inconsistent with the character of the community.

Staff Response: The project was originally designed and reviewed for consistency with the standards for traditional bluff top lots on Studio Drive with regards to the gross structural area, height, setbacks and ordinance requirements. During the Planning Commission hearings one of the commissioners stated that the standards for "non bluff" lots should be

considered. The non-bluff standards are generally applied to properties that are located on the east side of Studio Drive and contain traditional setbacks and yard areas. The Commission discussed the fact that if this property is not considered a "coastal bluff" then perhaps the "non bluff top standards" should apply. The applicant through their revised design reviewed these standards and designed the residence to comply. Essentially, homes on the west side of Studio Drive can build up to 3,500 square feet, however lots that are on the inland side of Studio are limited in gross structural to a percentage of the property size based on the size of the lot (or "usable lot"). In this case, the revised design complies with the 55% of the usable lot size standard (which in this case is 3,444 square feet) for "gross structural area." The gross structural area definition does not include a mezzanine, but includes all interior square footage including garages and carports. The proposed gross structural area for the project is 1,894 square feet which is 55% of the lot size of 3,444 square feet. Other residences along the west side of Studio Drive on the bluff could build up to 3,500 square feet.

With regards to aesthetics and visual character refer to discussion on visual resources above.

Issue 10 Cypress Tree (Appeal Item 2.9 and 11). The appellant states that based on an arborist review (Chip Tamagni, Certified Arborist) the existing cypress tree would be impacted by the development and that it would be "physically impossible" to save the tree. Additionally, the EIR should be revised to include information relating to the Cypress tree removal.

Staff Response:

As noted in the EIR, implementation of the project would require the removal of the pine tree, and would result in impacts to the noted cypress tree including impacts to the root zone (refer to BR Impact 4). The gas line that would require removal is located under the proposed residence, and removal would not affect the cypress tree. At this time, County Staff is not recommending total avoidance of the tree; however, this may be considered by the Board. The majority of root zone impacts would occur as a result of the constructed retaining wall and drainage improvements. Mitigation is identified to avoid unnecessary disturbance of the tree, and impacts to the root zone, including placement of protection fencing to avoid inadvertent disturbance. County staff has considered the noted concerns, and recommends the following revised condition to provide further protection of the tree during construction (additional clarifications are underlined):

"Prior to issuance of grading permits, the applicant shall retain a certified arborist to conduct any site preparation activities requiring cuts or impacts to the root zone of the existing mature cypress tree. The certified arborist shall monitor work within the root zone, including grading and excavation for the retaining wall, and utility work. The certified arborist shall verify that tree protection fencing shown on the plans and approved by the County is installed prior to ground disturbance within 25 feet of the trunk of the tree. The applicant shall comply with methods identified by the certified arborist to avoid unnecessary damage to the root zone, including use of hand tools within 25 feet of the trunk of the tree, protection and treatment of exposed roots during construction, and use of tunneling under shallow roots for utility installation in lieu of standard trenching."

Issue 11 California Building Code (Appeal Item 2.10 and 12). The appellant states that a condition should be placed on the project that requires compliance with the California Building Code.

Staff Response: San Luis Obispo County is legally charged with ensuring that all building permits issued and finalized comply with building code requirements. This is not a land use permit issue, but is a legal building code requirement. The project is legally obligated to comply with building code when permits are issued. Therefore a separate condition of approval on the discretionary land use permit is not warranted and does not occur with other projects.

Issue 12 Project Alternatives (Appeal Items 2.11 and 13). The appellant states that the board should not certify the Final EIR and the project should be denied because the EIR failed to properly analyze a range of alternatives.

Staff Response:

Please refer to EIR Chapter 5 Alternatives Analysis, which presents a reasonable range of alternatives, including design alternatives for consideration. These alternatives include a residence that does not include a basement (Design Alternative A – Reduced Project, Pilings), a more traditional design (Design Alternative B – Reduced Project, Traditional Design), and an option that includes additional visual articulation (Design Alternative C – Vegetation and Articulation). The Planning Commission approved reduced project would result in a reduction in the size of the structure compared to the originally proposed project and is consistent with Alternative B which was outlined in the FEIR. Please refer to responses above regarding the coastal bluff analysis and coastal bluff setback requirements.

Issue 13 Public Outreach (Appeal Item 2.12 and 14). The appellant requests that the Board deny certification of the Final EIR and deny the project because a scoping meeting was not conducted.

Staff Response: A scoping meeting was not conducted for this proposed project because scoping meetings are held for projects with state wide or regional significance. The county determined that a project for a single family residence within a developed neighborhood, on an existing legal lot of record zoned for the intended use, was not a project of regional or statewide significance. While the project is unique and many characteristics of this property are unlike other parcels in San Luis Obispo County, the nature of the proposed development does not trigger the requirements for a scoping meeting. Additionally, due to the extensive process conducted for this particular project through multiple community advisory meetings and discussions, opportunities for comment on the previously drafted environmental documents (multiple Mitigated Negative Declarations released for review) and previous Planning Department Hearings, comments through the EIR process and the two Planning Commission hearings, staff concludes that there has been ample opportunity for members of the public to comment on the project.

Issue 14 New Project Impact on Morro Strand State Beach/New Project Details (Appeal Item 2.13 and 15). Mr. Elder states that the Planning Commission revised project shows additional retaining walls and fill located on the State Parks beach area. The appellant states that the project revision impedes coastal access and triggers re-circulation of the Final EIR.

Staff Response: This project does not include any work on the State Beach. The project does require improvements which are all within the County right of way including the walls the appellant is referring to which are shown on the plans. The work necessary to construct the driveway will require stabilization of the slope along the roadway. All work within the County right of way is required to be reviewed and approved through an encroachment permit from the County.

Issue 15 Story Pole Study (Appeal Item 3.5). The Final EIR does not include or describe the story pole study.

Staff Response:

Please refer to EIR Section 4.1.4.1 Aesthetic Resources, Impact Assessment and Methodology, Analysis and Methodology, which explains the use of the story poles during the visual analysis. A stand-alone study was not conducted; the full analysis is presented in the EIR section itself. The photograph of the story poles is included in the project file for public review, and is included in the Final EIR (refer to Figure 4.1-8 Story Poles). The story poles were used for the visual analysis, and were not part of the geology and soils and coastal hazards analysis.

Issue 16 Limitation on Cantilevered Structures Beyond Setback (Appeal Item 3.8). The appellant states that the revised project has a 21 foot cantilevered living space and deck extending beyond the basement wall, bluff edge, and bluff setback requirements. Additionally the project does not comply with the Coastal Zone Land Use Ordinance section for exceptions to setback requirements.

Staff Response: The project does not request an exception to the setback requirements of the Coastal Zone Land Use Ordinance. Refer to our discussion regarding the coastal bluff setback in Issue 3 above. The project is not projecting into any of the setback areas.

Issue 17 FEIR Must be Re-Circulated (Appeal Item 6.2). The appellant states that the EIR must be re-circulated because new information has been added to the EIR and the public has been deprived of the opportunity to review the new material.

Staff Response

Pursuant to CEQA Guidelines Section 15088.5 (Recirculation of an EIR Prior to Certification): "A lead agency is required to recirculate an EIR when significant new information is added to the EIR....the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

- (2) *A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.*
- (3) *A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the projects' proponents decline to adopt it.*
- (4) *The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded."*

County staff carefully reviewed new information provided in the Final EIR and during the hearing process to determine if the information is significant, and if the new information triggers recirculation based on the parameters noted above. The additional analysis and documentation provide further substantial evidence supporting the conclusions documented in the EIR and recommended CEQA Findings and do not result in a new significant impact or increase the severity of identified impacts. The applicant has agreed to the recommended mitigation measures and has complied with the Planning Commission's request for a reduced project alternative, similar to alternatives provided in the Final EIR. Therefore, the new information does not require recirculation of the EIR because the new information merely clarifies and amplifies the substantial evidence already presented in an adequate Final EIR. Additionally, all information was submitted and posted prior to the public hearings with opportunity for the public to review and comment.

Issue 18 FEIR is Inconsistent with General Plan (Appeal Item 6.3). The appellant states that the Final EIR is not consistent with the General Plan. The inclusion of the additional wave run up and sea level rise analysis through the Planning Commission hearing continues to be out of compliance with the County Energy Wise Plan. Since there is an inconsistency between the standard adopted in the Energy Wise Plan and the Final EIR, the Final EIR is inconsistent with the General Plan and cannot be approved until the sea level rise figures are rectified in the Final EIR.

Staff Response: The Final EIR is provided as an informational document for the decision makers to utilize in their evaluation of the project's impacts to the environment, and if they are considered significant. The EIR is not required to be in compliance with the General Plan, however the EIR does evaluate which standards and policies apply to an individual project. The additional wave runup and hazards analysis provided was a result of questions from the Planning Commission, and a response to those questions as a part of the public hearing process. The Final EIR does not require any amendment, and the final conclusions of the EIR remain consistent with inclusion of the additional analysis that was brought before the Planning Commission.

Inaccurate Findings (Appeal Item 6.4). The appellant states that the findings adopted by the Planning Commission were not accurate and do not reflect the most recent wave run-up analysis.

Staff Response: Amended findings are attached to this staff report for review and consideration, and include the updated wave run-up analysis (although the Final EIR conclusions remain unchanged).

Incorrect Conditions (Appeal Item 16). The appellant states that the conditions of approval adopted by the Planning Commission are incorrect. Conditions to include should be 1) recordation of a deed restriction stating that no shoreline protection structure shall be constructed, 2) lateral access shall be recorded prior to issuance of permits, and 3) a deed restriction shall be executed which acknowledges and assumes risks and waives future claims of damage or liability.

Staff Response: Staff agrees with the appellants on this issue and, for that reason, recommends that your Board partially uphold the appeal. The project has been amended to include the above suggested conditions of approval.

OTHER AGENCY INVOLVEMENT

The project was referred to: Cayucos Citizens Advisory Council, Public Works, Cayucos Fire Protection District, Cayucos Sanitary District, Paso Robles Beach Water Association, California Coastal Commission, CA Department of Fish and Wildlife, CA State Lands Commission, Air Pollution Control District, County Counsel, CA Department of Conservation, Regional Water Quality Control Board, Native American Heritage Commission, CA Department of Parks and Recreation, Federal Emergency Management Agency, and the US Army Corps of Engineers.

FINANCIAL CONSIDERATIONS

This project is within the Coastal Zone, therefore no appeal fee was charged and funding for the appeal was processed

using department general funds.

RESULTS

Affirming and modifying the Planning Commission decision by partially denying and partially approving the appeal will mean the Final Environmental Impact Report and Minor Use Permit/Coastal Development Permit DRC2005-00216 are approved. This action would be consistent with the countywide goals of providing livable and well governed communities.

ATTACHMENTS

1. Attachment 1- Board of Supervisors Resolution with Findings and Conditions Exhibits A, B & C
2. Attachment 2 - Appeal letter with attachments
3. Attachment 3 - April 10, 2014 Planning Commission Staff Response Memo
4. Attachment 4 - April 10, 2014 Planning Commission Staff Report
5. Attachment 5 - Minutes from the April 10, 2014 Planning Commission
6. Attachment 6 - January 23, 2014 Planning Commission Staff Report
7. Attachment 7 - Minutes from the January 23, 2014 Planning Commission
8. Attachment 8 - Clerks File of all other correspondence in the record
9. Attachment 9 - Letter from Mr. Jack Loperena
10. Attachment 10 – Redline Version of Findings and Conditions Exhibits A & B
11. Attachment 11 – Redline Version of Exhibit C CEQA Findings